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## Attorneys for Defendants

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARK A. HOLUM, an individual, )  
vs. Plaintiff, ) ) No. CV-08-081-EFS  
EXTENDICARE HOMES, INC., a ) DEFENDANTS' MOTION TO STRIKE  
corporation; EXTENDICARE ) PORTIONS OF THE DECLARATION  
HEALTH SERVICES, INC., a ) OF MARK HOLUM  
corporation; and EXTENDICARE )  
HEALTH FACILITIES, INC., a )  
corporation, )  
Defendants. )

## **1. Relief Requested.**

The defendants request that the following portions of Mark Holum's Declaration submitted in opposition to motion for summary judgment be stricken, and not considered in response to defendants' summary judgment.

1       **2. Basis for Motion.**

2           A party opposing summary judgment must present admissible evidence to  
 3 defeat the motion; opposing affidavits must be based on personal knowledge, set out  
 4 facts admissible in evidence, and show that the affiant is competent to testify to the  
 5 matters stated. FRCP 56(c). To offer an expert opinion, the witness must be qualified  
 6 as an expert by knowledge, skill, experience, training or education. FRE 702. A  
 7 nurse or caregiver is not qualified to render medical diagnoses.  
 8

9           Testimony which is irrelevant is inadmissible, as are conclusions of law or  
 10 speculative or conclusory statutes. FRE 402; Soremekum v. Thrifty Payless, Inc., 509  
 11 F.3d 978 (9th Cir. 2007). Testimony that contains out of court assertions that are  
 12 meant to prove the truth of the matter asserted are also inadmissible. FRE 802.  
 13 Moreover, testimony that is directly contradictory to contemporaneous medical  
 14 records cannot create an issue of fact for trial. Chima v. Obedoza, 72 Fed. Appx. 577,  
 15 2003 WL 21771927 (9th Cir. 2003).

16           The portions of Mr. Holum's testimony contained in his Declaration which  
 17 should be stricken based on the above law are outlined below.  
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1       **3. Portions of the Declaration to be stricken:**

2       Paragraph 10

3       Lack of personal knowledge, lack of foundation, lack of qualification to render  
4       expert opinion, conclusory, speculative.

5       Mr. Holum's speculative conclusions on what type of care The Gardens can  
6       give based on medical diagnoses, and the type of training others at The Gardens may  
7       have had lacks any foundation, or qualifications necessary to render an expert opinion.

9       Paragraph 14

10      Relevance, speculative.

11      Mr. Holum's speculation on events that did not occur are irrelevant and  
12      inadmissible.

14      Paragraph 17

15      Lack of foundation, lack of qualifications to render expert opinion.

16      Mr. Holum fails to identify any foundation he has for testifying on federal laws,  
17      fails to identify the federal laws, and fails to identify any expertise necessary to render  
18      an expert legal opinion.

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21      ///

22      ///

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## 4. Conclusion.

For the foregoing reasons, plaintiff requests that the court strike the portions of Mr. Holum's Declaration.

DATED this 27th day of January, 2009.

s/Patrick J. Cronin, WSBA No. 28254  
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1 I hereby certify that on January 27, 2009, I electronically filed the foregoing  
2 with the Clerk of the Court using the CM/ECF System which will send notification of  
3 such filing to the following:  
4

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DEFENDANTS' MOTION TO STRIKE  
PORTIONS OF THE DECLARATION OF MARK  
HOLUM -- 5

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